

IN THE UNITED STATES DISTRICT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

IN THE MATTER OF THE SEARCH OF)
THE PERSON OF JOSHUA SEAN ALLEN)
TO OBTAIN DNA SAMPLES)

No.: 7:22-mj-1078-RJ

**AFFIDAVIT IN SUPPORT OF AN APPLICATION FOR A SEARCH
WARRANT**

I, Timothy Moon, Task Force Officer, Bureau of Alcohol, Tobacco, Firearms, and Explosives, being duly sworn, hereby depose and state:

INTRODUCTION

1. Your affiant, Timothy Moon, is a "federal task force law enforcement officer" within the meaning of 18 U.S.C. § 2510(7), that is, an officer of the United States who is empowered by law to conduct investigations of, and to make arrests for, offenses enumerated in 18 U.S.C. § 2516.

2. This affidavit is submitted in support of an application for a warrant to obtain DNA samples, specifically buccal swabs from the person of JOSHUA SEAN ALLEN (hereafter referred to as ALLEN), so that such samples can be compared to swabs containing possible DNA obtained from a Smith and Wesson "40 S&W" firearm magazine and a Browning 9mm pistol (serial number 245RP14968) that ALLEN is suspected of possessing on October 1, 2021 and October 5, 2021 in the Eastern District of North Carolina.

3. Based on the information set forth herein, I submit there is probable cause to believe that the person to be searched, more fully described in Attachment A, contains evidence, contraband, fruits, or instrumentalities of criminal violations

or attempted violations of 18 U.S.C. § 922(g) (possession of a firearm by a prohibited person).

6. The facts set forth in this affidavit are based upon my personal observations, my training and experience, and information obtained from other law enforcement officers and witnesses. This affidavit is intended to show merely that there is sufficient probable cause for the requested warrant and does not purport to set forth all of my knowledge of or investigation into this matter.

STATEMENT OF PROBABLE CAUSE

7. On Friday, October 1, 2021, officers with the Wilmington Police Department (hereinafter "WPD") were dispatched to a call for service in reference to a shooting at 516 North 30th Street in Wilmington, North Carolina. Upon arrival, officers with WPD met with Keosha Atkinson who stated that she was previously in a dating relationship with ALLEN and they had recently broken up.

8. Atkinson stated to officers that she was upstairs in her bedroom when she heard ALLEN break into her home and yell something to the effect of "I'm here." Atkinson stated to officers that ALLEN was chased out of her residence by her friend "Key", and she believed ALLEN dropped a magazine for a handgun as he was fleeing the residence. Atkinson stated to officers that a short time later, ALLEN returned to the residence and Atkinson saw ALLEN pointing a weapon through a window and fire the weapon into the house. Atkinson stated that she thought ALLEN fired six (6) – seven (7) rounds through the residence. Atkinson stated that she yelled out that she was hit in which ALLEN stated something to the effect of "good" and then left

the scene. Atkinson was not shot during this incident, but officers located multiple bullet holes in the residence and officers located five (5) WIN 40 S&W and one (1) S&B 40 S&W spent shell casings in the area in which Atkinson said ALLEN shot.

9. Responding Officers with WPD set up a perimeter and had a Police K-9 on scene in an attempt to track ALLEN. During the K-9 track, the Police K-9 located a .40 caliber Smith & Wesson SD40 VE displaying serial number HEX0896 behind the residence in a wooded area. Officers located a white sock in the shrubbery near the handgun containing approximately 15.58 grams of suspected cocaine base crack, approximately 35.08 grams of suspected cocaine, and 270 bindles of suspected heroin. The K-9 was unable to locate ALLEN.

10. WPD Crime Scene Investigators (CSI) responded to process the scene for evidence. CSI noted the .40 caliber Smith & Wesson, located behind the residence, had a live Gn3 .40 S&W round in the chamber but did not have magazine inserted in the handgun. CSI located a Smith and Wesson "40 S&W" magazine inside the residence and noted it was a fourteen (14) round capacity magazine but only contained eleven (11) Gn3 .40 S&W rounds. CSI swabbed the Smith and Wesson "40 S&W" magazine for the presence of possible DNA.²

11. On Tuesday, October 5, 2021, law enforcement officers were conducting surveillance on foot in the area of 10th and Queen in Wilmington, North Carolina

² The .40 caliber Smith and Wesson firearm was not swabbed for the possible presence of DNA due to the police K-9 contaminating the firearm with its saliva.

when they saw what appeared to be three (3) individuals smoking some type of narcotics inside a vehicle.

12. Deputy Koonce with the New Hanover Sheriff's Office (NHSO) got out on foot and was able to positively identify ALLEN walking around in the area. Deputy Koonce knew ALLEN to be a validated gang member, drug dealer, to possess firearms, and knew that he is a convicted felon. At the time ALLEN had active state warrants for Assault with a Deadly Weapon, Possession of Firearm by Felon, Breaking and Entering, and Discharging a Firearm into an Occupied Dwelling.

13. When ALLEN saw Deputy Koonce, ALLEN pulled his hood over his head and began to walk away while looking back at Deputy Koonce. ALLEN then put his hands in his waistband area and began to flee on foot and Deputy Koonce chased ALLEN. Deputy Koonce stated that ALLEN ran down Shaw's Alley in Wilmington, North Carolina and made a throwing motion with his left hand. Deputy Koonce stated that he heard a loud object hit a wood structure and then hit the ground. ALLEN continued to flee from Deputy Koonce and Deputy Koonce deployed his taser which did not stop ALLEN. ALLEN attempted to jump a chain link fence at which time Deputy Koonce was able to grab ALLEN and take him into custody. Officers located approximately 2.84 grams of marijuana on ALLEN's person in a search incident to arrest.

14. After ALLEN was in custody, Deputy Koonce and assisting officers walked back to the area where Deputy Koonce saw ALLEN make the throwing motion and officers located a black and brown Browning, 9mm caliber handgun

(serial number 245RP14968) in the south yard of 711 South 10th Street Wilmington, North Carolina, next to a chain link fence that surrounded the yard.

15. Officers ran the Browning 9mm handgun's serial number 245RP14968, through NCIC and it had not been reported stolen at the time of the incident.

16. WPD CSI was called to the scene to process and collect the firearm. WPD CSI swabbed the Browning 9mm handgun for the presence of possible DNA.

17. Detective Moon and Detective S. Walker of the WPD attempted to interview ALLEN. Detective Moon asked ALLEN if he had consumed any drugs or alcohol. ALLEN stated that he had consumed alcohol and did not feel comfortable speaking to detectives and requested to speak with an attorney.

18. ALLEN was previously convicted of Possession of a Firearm by a Convicted Felon on or about May 24, 2021, and was sentenced to 17 – 30 months, suspended, with supervised probation.

19. ALLEN is currently being detained in state custody and housed at the New Hanover County Jail.

20. When a person touches an object, such as a firearm or firearm magazine, that person's DNA can be left on such items.

21. While it is possible to obtain a usable sample of saliva when an individual expectorates, the preferred method by biological forensic analysts is through the controlled sample of an individual's saliva by way of a buccal swab inserted briefly just inside mouth and cheek area. This process takes less than one

second per side of the mouth, carries no risk of physical pain, injury or embarrassment to an individual.

22. A DNA sample from ALLEN is necessary to conduct a comparison with any possible DNA obtained from the seized firearm and firearm magazine, which were collected on October 1, 2021, and October 5, 2021, by the Wilmington Police Department.

REQUEST FOR AUTHORIZATION

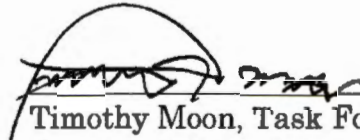
23. Based on the foregoing, probable cause exists for the issuance of a search warrant to obtain a DNA sample from ALLEN. The purpose of this search warrant is to compare the DNA profile from ALLEN's known DNA sample against any DNA profile obtained from evidentiary items recovered on October 1, 2021 and October 5, 2021, including but not limited to a Smith and Wesson "40 S&W" handgun magazine and a Browning, 9mm caliber handgun (serial number 245RP14968).

24. Wherefore, it is requested that the Court issue a search warrant authorizing Agents of the ATF and/or other authorized officers, to obtain Buccal DNA swab samples from ALLEN.

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CONCLUSION

25. Based on the forgoing, I request that the Court issue the proposed search warrant.



Timothy Moon, Task Force Officer
Bureau of Alcohol, Tobacco, Firearms, and
Explosives

On this 29 day of April 2022, Timothy Moon appeared before me via reliable electronic means, was placed under oath, and attested to the contents of this Affidavit.



ROBERT B. JONES, JR.
UNITED STATES MAGISTRATE JUDGE

Attachment A

1. JOSHUA SEAN ALLEN, [REDACTED]



ATTACHMENT B

Particular Things to be Seized

This warrant authorizes:

- (i) the search of Joshua Sean Allen, identified in Attachment A, to obtain a DNA sample by way of a Buccal swab.